

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the	)	Application No. C-2910
Application of Lincoln	)	
Electric System of Lincoln,	)	PROTECTIVE AGREEMENT
Nebraska, seeking contract	)	
carrier permit authority.	)	Entered: August 5, 2003

In the above-captioned matter, the parties will be serving Interrogatories, Data Requests, and other discovery items that may require the parties to disclose certain confidential information considered to be proprietary, trade secret and competitively confidential in nature by the parties. Such information sought to be reviewed may include financial data, traffic data, network information, customer information and contractual data, which is confidential to each of the parties. The information to be covered hereunder will include all matters served on the parties or filed with the Nebraska Public Service Commission (the "Commission") in the above proceeding.

Accordingly, it is agreed:

1. All documents, data, information, studies and other matters filed with the Commission or served on a party that are designated by a party to be trade secret, privileged or confidential in nature shall be furnished pursuant to the terms of this Agreement, and shall be treated by all persons accorded access thereto pursuant to this Agreement as constituting trade secret, confidential or privileged commercial and financial information (hereinafter referred to as "Confidential Information"), and shall neither be used nor disclosed except for the purposes of this proceeding, and solely in accordance with this Agreement.

a. Confidential Information shall not include data and information (i) that was at the time of receipt in the public domain or which subsequently became part of the public domain other than by breach of this Agreement; (ii) that was lawfully in the possession of the recipient prior to the date hereof; or (iii) that was lawfully acquired from a third party that was under no obligation to keep such data or information secret.

2. All Confidential Information made available pursuant to this Agreement shall be given to counsel for the parties, and shall not be used or disclosed except for purposes of this proceeding; provided, however, that access to any specific Confidential Information may be authorized by said counsel

solely for the purpose of this proceeding, to consultants or employees of any party to this Agreement, if said person has signed an agreement to be bound by the terms and conditions of this Protective Agreement.

3. Any person to be given access to the Confidential Information contemplated herein shall receive a copy of this Agreement and execute in writing an agreement in the form attached hereto as Exhibit A to comply with and be bound by all of the terms of this Agreement; and counsel shall furnish copies of said agreement to comply and be bound by the terms of this Agreement to counsel for the other party.

4. Where feasible, Confidential Information will be marked as such prior to delivery to counsel for the party requesting such Confidential Information.

5. The materials containing the Confidential Information shall be segregated from any and all other files of the party receiving such Confidential Information and shall be withheld from inspection by any person except under the conditions established pursuant to this Agreement, unless such Confidential Information is released from the restrictions of this Agreement either through agreement of the parties or by order of the Commission.

6. In the event that the parties hereto are unable to agree that certain documents, data, information, studies or other matters constitute Confidential Information, the party objecting to the claim shall forthwith submit the matter to the Commission's Hearing Officer for review pursuant to this Agreement and in accordance with applicable Rules and legal precedents of the Commission. When the Hearing Officer rules on the question of whether any documents, data, information, studies or other matters submitted to it for review and determination are Confidential Information, the Hearing Officer will enter an order resolving the issue.

7. All written information filed by the parties in this proceeding that has been designated as Confidential Information, if filed with the Commission, will be sealed by the Commission, as applicable, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Agreement, unless such Confidential Information is released from the restrictions of this Agreement, either through agreement of the parties or, after notice to the parties and hearing, pursuant to an order of the Commission and/or final

order of a court having jurisdiction.

8. All persons who may be entitled to receive, or who are afforded access to, any Confidential Information by reason of this

Agreement shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the purposes of preparation for and conduct of this proceeding, and then solely as contemplated herein, and shall take

those precautions that are necessary to keep the Confidential Information secure and in accordance with the purposes and intent of this Agreement.

9. The parties hereto affected by the terms of this Agreement further retain the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Agreement in response to interrogatories, requests for information or cross-examination on the grounds of relevancy or materiality.

10. This Agreement shall in no way constitute any waiver of the rights of any party herein to contest any assertion or finding of trade secret, confidentiality or privilege, and to appeal any such determination of the Commission or such assertion by a party.

11. In the event of an appeal of the determination of this proceeding, portions of the record in this proceeding containing Confidential Information may be sealed upon motion of a party hereto and forwarded to any court of competent jurisdiction for purposes of an appeal, but under seal as designated herein for the information and use of the court. If a portion of the record is forwarded to a court under seal for the purposes of an appeal, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal. Unless otherwise ordered, Confidential Information shall remain under seal and shall continue to be subject to the protective requirements of this Order after final settlement or conclusion of this matter, including administrative or judicial relief thereof.

12. Upon completion of this proceeding, including any administrative or judicial review thereof, all Confidential Information, whether the original or any duplication or copy thereof, furnished under the terms of this Protective Agreement,

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shall be returned to the party furnishing such Confidential Information upon request or destroyed with a written certification of destruction provided to the furnishing party. Confidential Information made part of the record in this proceeding shall remain in the possession of the Commission.

13. The provisions of this Agreement are specifically intended to apply to data or information supplied by or from any party to this proceeding, and to any non-party that supplies documents pursuant to process issued in this proceeding.

14. This Agreement shall be effective forthwith.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Protective Order described herein shall be, and hereby is adopted.

MADE AND ENTERED at Lincoln, Nebraska this 5th day of August, 2003.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Deputy Director

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the	) Application No. C-2910
Application of Lincoln	)
Electric System, seeking	) EXHIBIT A TO PROTECTIVE
contract carrier permit	) AGREEMENT
authority.	)
	) Approved: August 5, 2003

I have been presented with a copy of the Protective Agreement executed by the parties in the above-entitled docket.  
I have read the Agreement and agree to be bound by the terms of said Agreement.

I further agree that the information requested shall be used only for the valid purposes of this proceeding as provided in said Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

Signature:

\_\_\_\_\_

Address and Telephone:

\_\_\_\_\_

Representing:

\_\_\_\_\_

Position:

\_\_\_\_\_

